



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced: **02/19/10**

Bill No: [SB 1277](#)

Tax: **Pet Food Tax**

Author: **Florez**

Related Bills:

This analysis will only address the bill's provisions which impact the State Board of Equalization (Board).

BILL SUMMARY

Among its provisions, this bill would require a customer who purchases pet food to pay an as yet specified charge per pound to be collected by the store at the time of the sale.

ANALYSIS

CURRENT LAW

Under existing law, a state and local sales and use tax is imposed on the sale or use of tangible personal property in this state, including pet food, unless specifically exempted in the law. Currently, the total combined sales and use tax rate is between 8.25 and 10.25 percent, depending on the location in which the merchandise is sold. The Board does not collect any additional taxes or fees on the sale or use of pet food.

PROPOSED LAW

Registry and Fee. Among other things, this bill would add Section 600.6 to the Penal Code to require every person convicted in this state of animal abuse, as defined, to register, based on residency, with the chief of police, sheriff, or chief of police of a campus of the University of California, the California State University, or the California Community Colleges.

The Department of Justice (DOJ) would be required to make available information to the public concerning persons required to be registered as a result of felony animal abuse conviction by means of an Internet website (animal abuse registry) pursuant to Section 600.7, which this bill would add to the Penal Code. The DOJ would be required to update the animal abuse registry on an ongoing basis.

This bill would also add Section 600.8 to the Penal Code to impose a pet food charge, which would fund, in part, the DOJ's administration of the animal abuse registry. Specifically, the bill would require a person to pay a charge upon the purchase of pet food in an unspecified amount per pound. A store, which is defined to mean a retail establishment that sells pet food, would be required to collect the pet food charge from the customer at the time of sale and remit the charge collected to the Board. The bill provides that the pet food charge shall not be subject to sales tax.

Collection and Administration. The Board would be required to administer and collect the pet food charge pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position

provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

The pet food charge would be due and payable quarterly on or before the 15th day of the month following each calendar quarter. Payments would be accompanied by a form, as prescribed by the Board, including, but not limited to, electronic media. The Board could require payment of the fee for other than quarterly periods.

The Board would be authorized to adopt rules and regulations to carry out its administration and collection of the proposed fee, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

Animal Protection Fund. All moneys collected by the Board would be deposited in the Animal Protection Fund, which this bill would establish in the State Treasury. The moneys in the fund would be continuously appropriated without regard to fiscal year, and expended for the following purposes:

- By the DOJ for creating, administering, and updating the animal abuse registry;
- By local governments for spay and neuter programs;
- No more than 3 percent of the revenue deposited shall be used for reimbursement of costs of administration, collection, enforcement, and auditing requirements associated with the pet food charge or animal abuse registry.

As an urgency statute, this bill would become effective immediately upon enactment.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to keep California on the forefront of animal protection by helping ensure animals are not being adopted out to convicted abusers thereby ending the cycle of abuse and increasing the likelihood of finding these pets the forever home they deserve.
2. **The Board would not have sufficient time to implement the new tax program.** To effectively implement this bill, it would be necessary for the Board to notify and register retail stores selling pet food, develop computer programs, hire and train key staff, create necessary forms and schedules, and answer taxpayer inquiries. These functions should take place before the charge becomes operative.

As an urgency statute, the provisions of this bill, including the pet food charge, would become effective immediately upon enactment thus providing the Board no lead time to effectively or successfully implement the proposed pet food charge program. Without adequate lead time, the Board would not have the necessary structure in place to administer the proposed program, such as returns, computer programs, forms and schedules, and staff. In addition, the Board would not be able to properly notify and register retail stores of the new charge. Without such notification and registration, retail stores would likely not collect the pet food charge from customers; however, they would still be responsible for remitting the charge to the Board. Retail stores also need sufficient time to program registers and train employees.

Board staff estimates that it would take a minimum of six months to implement the new program proposed by this bill. In order to provide the Board with the necessary 6-month lead-time, it is suggested that the bill be amended to provide for a delayed

operative date to the first day of the first calendar quarter commencing more than six months after the bill is enacted.

3. **Funding necessary for administrative start-up costs.** This bill proposes a new pet food charge to be imposed immediately upon enactment of the bill. In order to notify retail stores, develop computer programs and reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative costs that would not already be identified in the Board's budget.
4. **This bill could complicate auditing of taxpayer records.** This bill would require a store to charge their customers an amount for each pound of pet food purchased. Retailers already must collect and remit sales and use tax on the retail sale of pet food in California, and most likely sell other taxable tangible personal property. Adding an additional charge that would be imposed on a customer's purchase of pet food would require retailers to keep track of pet food sales separately from other sales of tangible personal property.

While larger stores have the ability to program the amount of the charge for each product into its computer system and automatically add that charge to the purchase price once the product code or UPC is entered at the register, smaller pet food stores may find collecting the charge burdensome. Cashiers at smaller pet food stores would have to determine the charge for each pet food product sold. As such, the charge would be collected based on cashier calculations, which could lead to reporting errors.

The author may wish to consider establishing a fixed charge for each pet food product to simplify collection by retail stores.

5. **Clarification needed for fee computation on non-standard weight amounts.** The proposed charge is based on weight. It is unclear how the charge would be computed on pet food that is not sold in whole pounds. For example, what would the charge be on a can of cat food that weighs 3 ounces? Are weights available for all pet food products, such as bales of hay? The bill should be amended to address these concerns.
6. **Additional terms need defining or clarification.** Since this bill does not define the term "pet food," it is unclear exactly what the author intends to be subject to the charge. For example, would the charge apply to items beyond what is normally thought of as pet food such as feeder mice for snakes or crickets for reptiles? What about fruits or vegetables fed to pets, such as carrots? A definition for the term "pet food" would help clarify.

The bill should also include a definition for the term "customer." In its current form, the bill could impose the pet food charge more than once on the same pet food product. A "customer" could include (1) a wholesaler that purchases pet food for resale to a pet food store, (2) a retail pet food store, and (3) the ultimate customer. The author may also wish to consider adding language to require a store to collect the charge from the customer at the time of retail sale, and adding a definition for "retail sale" to mean a sale for any purpose other than resale in the regular course of business.

Board staff is available to work with the author's office in drafting appropriate amendments.

7. **Would the pet food charge be subject to sales tax?** Under existing Sales and Use Tax Law, taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of the materials used, labor or service cost, or any other expense of the retailer passed on to the customer.

The bill does not contain language “imposing” the charge upon the customer, nor does it indicate the customer is liable for the pet food charge if the store fails to collect that amount. The bill also does not require the store to separately state the amount of the charge on the customer’s receipt, which could allow a store to include the charge within sales price of the pet food. These provisions seem to indicate the pet food charge is an expense of the retailer and subject to sales tax.

However, proposed Section 600.8(a)(3) specifically excludes the amount of the charge from the measure of sales tax indicating the pet food charge is the expense of the customer.

Since it appears the author does not intend for the pet food charge to be subject to sales tax, it is suggested the bill amend Revenue and Taxation Code Sections 6011 and 6012 to specifically exclude the proposed charge from the definition of “sales price” and “gross receipts.”

8. **This bill appears to cap Board and DOJ reimbursement.** This bill would cap reimbursement to no more than 3 percent of the revenues deposited in the Animal Protection Fund for costs of administration, collection, enforcement, and auditing requirements associated with the pet food charge provisions “and Section 600.7.” Section 600.7 requires the DOJ to create, administer and update the animal abuse registry, as described. Is it the author’s intent to cap the DOJ’s reimbursement of administrative costs? If so, it is suggested to also add cost cap provisions to Section 600.8(b)(1), which authorizes reimbursement to the DOJ for their costs associated with the animal abuse registry, and amend Section 600.8(b)(3) to clarify that the reimbursement of costs of administration, collection, enforcement, and auditing are for the Board and to delete “and Section 600.7. “

Furthermore, the provisions limiting the Board’s reimbursement could be problematic if revenues deposited in the fund don’t allow for the Board to be fully funded to administer and collect the pet food charge. Since this bill does not currently specify the amount of the pet food charge, and the Board and DOJ administrative costs have not yet been determined, it is unknown at this time if the cost cap provisions would provide the Board with sufficient funding to properly administer the proposed program.

9. **Suggested amendments.** The following amendments are suggested to allow the Board to properly administer the proposed pet food charge program.

- **Refunds.** This bill should authorize the payment of refunds on overpayments of the charge from the Animal Protection Fund.

600.8. (b) Except for payments of refunds made pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, all All-moneys collected by the State Board of Equalization pursuant to this section shall be deposited in the fund.

- **Reference clarification.** This bill should clarify references to “fee” and “feepayer” within the Fee Collection Procedures Law mean the pet food charge and store, respectively.

600.8. (d) (1) The State Board of Equalization shall administer and collect the ~~moneys charged~~ pet food charge pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For the purposes of this section, the references in the Fee Collection Procedures Law to “fee” shall include the charge imposed by this section, and the references to “feepayer” shall include a store required to collect and remit the pet food charge imposed by this section.

- **Electronic registration and filing.** All new programs administered by the Board should coincide with the Board’s electronic services projects and activities, which includes, in part, internet registration and the transition to e-filing.

600.8. (d)(3) Every person required to collect the charge imposed under this section shall register with the State Board of Equalization. Every application for registration shall be made upon a form prescribed by the State Board of Equalization and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the State Board of Equalization may require. An application for a permit shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization.

600.8. (e)(1) The charge shall be due and payable to the State Board of Equalization quarterly on or before the 15th day of the month following each calendar quarter.

(2) Each store, on or before the 15th day of the month following each calendar quarter, shall file a return for the preceding quarterly period with the State Board of Equalization using electronic media, in the form prescribed by the State Board of Equalization. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization. Payments shall be accompanied by a form, as prescribed by the State Board of Equalization, including, but not limited to, electronic media.

- **Duplicative language.** Assembly Bill 1547 (Ch. 545, Stats. 2009) added Section 55041.1 to the Fee Collection Procedures Law to authorize the Board to require the payment of the amount due and the filing of returns for periods other than the period or periods set forth in the tax and fee laws administered under that part. As such, the provision in this measure allowing the Board to requirement payment of the charge for other than quarterly periods is no longer necessary.

600.8. (f) ~~The State Board of Equalization may require the payment of the moneys for other than quarterly periods.~~

COST ESTIMATE

The Board would incur major costs to adequately develop and administer a new pet food charge program. These costs would include notifying and registering taxpayers, developing computer programs, developing forms and publications, mailing and processing returns and payments, conducting audits, carrying out compliance efforts, developing regulations, training staff, and answering fee-related inquiries. A cost estimate of this workload is pending; however, it is estimated these costs would be over \$1 million.

REVENUE ESTIMATE

A revenue estimate could not be prepared since this measure does not clearly identify the pet food subject to the charge nor specify the rate.

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